exceeding $200 in each case as the Official Administrator may be satisfied is due to them respectively for expenses incurred. In other words, Low Oon Tong will in no case receive more than $400 in all, nor Low Tee Lam more than $600 in all in respect of such expenses.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
July 22, 1938.

SUPRAMANIAM AND 3 OTHERS
v.
PUBLIC PROSECUTOR.

(PERAK MAGISTRATE'S CRIMINAL APPEALS Nos. 34, 35, 36 and 37 of 1938)

Criminal Procedure Code, S. 166—Penal Code, S. 160—Minor Offences Enactment, S. 25—charge of affray joined with charge of disorderly behaviour in public places in the alternative—accused charged with disorderly conduct only after an objection had been raised at hearing—irregularity whether curable.

Where the accused were charged with committing affray under Section 160 of the Penal Code and with disorderly behaviour in public places under Section 25 of the Minor Offences Enactment in the alternative, but, upon an objection being raised at the hearing as to the propriety of the joinder of the charges the magistrate charged the accused with an offence under which they had been charged in the alternative.

Held, that any irregularities that might have occurred in the events that had happened came within and were curable by Section 166 of the Criminal Procedure Code.

MAGISTRATE'S CRIMINAL APPEAL.

B. K. Das for the Appellants.

R. M. Cluer, Deputy Public Prosecutor, for the Respondent.

Murray-Aynsley, J. I can find no merits in these appeals as regards questions of fact and I do not consider the penalties excessive. However, Mr. Das has raised certain questions of procedure which need consideration. When first charged the appellants were charged under Section 160 of Cap. 45 and Section 25 of Cap. 46. Mr. Das during the hearing raised the point that persons could not be charged in the alternative with offences under the Penal Code and with offences under other Enactments. This objection is based on Indian views as to the meaning of the Indian equivalent of Section 166 Criminal Procedure Code. I am unable to follow the reasoning on which such a limitation is based. Confronted with this the Magistrate charged the Appellants with an offence under Cap. 46 viz., section 25 under which they had been already charged in the alternative. There was a verbal error in the new charge. The appellants were given an opportunity of having witnesses recalled for prosecution but did not avail themselves of it. Neither did any of them elect to give evidence.

In my opinion any irregularities that may have occurred are within the scope of Section 422 of the Criminal Procedure Code, and I consider that these appeals should be dismissed.

Appeals dismissed.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
September 12, 1938.

GURUNATHAN CHETTIAR AND ANOTHER
v.
PUBLIC PROSECUTOR.

(PERAK MAGISTRATE'S CRIMINAL APPEALS Nos. 47 and 48 of 1938)

Minor Offences Enactment (Cap. 46), S. 35(i) —theft—insufficient evidence of—charge amended to one of fraudulent possession of property—whether amendment permissible.

Where a prosecution for theft breaks down for lack of or insufficient evidence, it is improper for the Magistrate to amend the charge to one of fraudulent possession of the stolen property under section 35 (i) of the Minor Offences Enactment. To succeed on the latter charge it must be shown that the possession of the article alleged to have been stolen is a suspicious circumstance within the meaning of the section, but possession of an article in common use such as an oil drum is not such a suspicious circumstance where there is no evidence that the article possessed is the one stolen.

If from the circumstances alleged against an accused it is impossible for the person in whose mind suspicions are aroused to say that he suspects that the goods were stolen and not fraudulently obtained or vice versa, a charge under section 35 (i) of the Minor Offences Enactment is not maintainable.

MAGISTRATE'S CRIMINAL APPEALS.

G. Terrell, for the Appellants.

R. M. Cluer, Deputy Public Prosecutor, for the Respondent.

Murray-Aynsley, J. This appeal raises two points—one as to the merits, the other as to a matter of procedure.

As regards the question of merits it is interesting to observe the history of the case. Apparently the Appellants were in the first instance charged with the

S. 35 (i) of the Minor Offences Enactment (Cap. 46) reads:—

"Any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine of fifty dollars, or to imprisonment for three months."